436.

SUPREME COURT OF THE UNITED STATES.

No. 138.

THE RECTOR, CHURCH WARDENS, AND VESTRYMEN OF CHRIST CHURCH, IN THE CITY OF PHILADELPHIA, IN TRUST FOR CHRIST CHURCH HOSPITAL, PL'FFS IN ERROR,

vs.

THE COUNTY OF PHILADELPHIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA FOR THE EASTERN DISTRICT.

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GIDEON, Print.

Writ of Error.

UNITED STATES,
Eastern District of Pennsylvania, sct.

The President of the United States to the judges of the supreme court of Pennsylvania for the eastern district, greeting:

[SEAL.]

Because that in the record and process, and also in the rendering of judgment in a suit before you, between The Rector, Church Wardens and Vestrymen of Christ Church in the city of Philadelphia, in trust for Christ Church Hospital, plaintiffs, and The County of Philadelphia, defendants, a manifest error has intervened, to the great damage of the said the Rector, Church Wardens and Vestrymen of Christ Church in the city of Philadelphia, in trust for Christ Church hospital, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Supreme Court of the United States at the city of Washington on the first Monday of December next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Philadelphia, this seventh day of September, A. D. one thousand eight hundred and *forty* fifty-eight, and in eighty-third year of the independence of the said United States.

J. BURCHARD,
Pro. Clerk Circuit Court.

Allocation.

R. C. GRIER,
Assoc. Just. S. C. U. S.

Sept'r 3d, 1858.

Citation.

CHRIST CHURCH, PHILADELPHIA,
vs.
THE COUNTY OF PHILADELPHIA.

The United States of America to the County of Philadelphia, greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of Pennsylvania, wherein The Rector, Church Wardens and Vestry of Christ Church, in trust for Christ Church Hospital, are plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the undersigned, one of the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, this fifteenth day of November, A. D. 1858, and in the eighty-third year of the independence of the said United States.

JOHN CADWALADER.

I accept service of the within citation for the city of Philadelphia.

DAVID W. SELLERS,
Assistant City Solicitor.

November 16, '58.

Pleas before the Honorable Jeremiah S. Black, chief justice, and his associates, justices of the supreme court of Pennsylvania, at a supreme court in and for the eastern district, holden at Philadelphia, of the term of March, 1853, No. 145. It is thus contained:

EASTERN DISTRICT OF PENNSYLVANIA, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the Sheriff of Philadelphia county, greeting:

We command you that you summon The County of Philadelphia, late of your county, so that they be and appear before the justices of our supreme court, at our same court, to be holden at Philadelphia, in and for the eastern district of the State of Pennsylvania, on the first Monday of June next, to answer The Rector, Church Wardens, and Vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, of a plea of trespass on the case, &c.; and have you then and there this writ.

Witness the Honorable Jeremiah S. Black, chief justice of our said supreme court, at Philadelphia, the eleventh day of May, in the year of our Lord one thousand eight hundred and fifty-three.

JNO. F. BELSTERLING,
Pro Prot. Sup. Court, Eastern District.

(*Endorsement.*)

145—March Term, 1853.

THE RECTOR, CHURCH WARDENS AND Vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital,
vs.
THE COUNTY OF PHILADELPHIA.

Summons case. Returnable the first Monday of June, 1853. Service accepted for county comm'rs.

W. D. BAKER,
Sol. County Phil'a.

May 12, '53.

H. M. WATTS.

In the Supreme Court—Of March Term, 1853.

THE RECTOR, CHURCH WARDENS AND Vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital,
versus
THE COUNTY OF PHILADELPHIA.
No. 145.

And now, to wit, February 27th, A. D. 1854, it is hereby agreed between the parties to the above suit that the following case be stated for the opinion of the court in the nature of a special verdict.

On the sixth day of April, A. D. 1833, the legislature of Pennvania passed an act, hereunto annexed, marked A.

On the fourteenth day of April, A. D. 1851, the same legislature passed an act, hereunto annexed, marked B.

Afterwards the defendants, by their officers and agents, valued and assessed certain real estate and ground rents, the property of the plaintiffs, situate in the city and county of Philadelphia, at certain rates for State, county, and poor taxes, for the year 1852, as will appear by the annexed schedule, marked C; which property belonged to the plaintiffs before the passage of the act of 6th April, 1833.

On the 28th day of March, 1852, the defendants proceeded by warrant of distress to levy upon goods found upon the premises, so as aforesaid valued and assessed, for the collection of the said taxes.

Whereupon the said plaintiffs afterwards, to wit, on the March, of the year last aforesaid, gave the said defendants the notice hereunto annexed, marked D.

And finally the said plaintiffs, on the day of April, 1853,

paid the said defendants the several amounts of the taxes in the schedule aforesaid, marked C.

In this schedule are the hospital buildings in the actual occupancy of the plaintiffs for hospital purposes. If the court should be of opinion, under the above state of facts, that the plaintiffs are entitled to recover the am't paid under protest, or any part thereof, then judgment to be entered for the plaintiffs; otherwise for the defendant.

H. M. WATTS,
Att'y for the Pl'ffs.
WM. BADGER,
Solicitor for the County of Phil'a.

March 1st, 1854.

A.

Whereas it appears that Christ Church Hospital, in the city of Philadelphia, has for many years afforded an asylum to numerous poor and distressed widows, who *who* would probably else have become a public charge, and it is represented that in consequence of the decay of the buildings of the hospital estate and the increasing burden of taxes its means are curtailed and its usefulness limited: Therefore,

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the real property, including ground rents, now belonging and payable to Christ Church Hospital, in the city of Philadelphia, so long as the same shall continue to belong to the said hospital, shall be and remain free from taxes.

B.

Act of 14th April, A. D. 1851.

Section 13. That all property, real and personal, belonging to any association or incorporated company, which is now by law exempt from taxation, other than that which is in the actual use and occupation of such association or incorporated company, and from which an income or revenue is derived by the owners thereof, shall hereafter be subject to taxation in the same manner and for the same purposes as other property is now by law taxable, and so much of any law as is hereby altered and supplied, be, and the same is hereby, repealed: Provided, that nothing herein contained shall be construed to exempt cemetery companies from taxation.

C.

	Valuation.	County, 60 cts.	State, 30 cts.	Poor, 20 cts.	Total.
Chesnut Ward.					
Estates Nos. 4 and 5, Front st.....	$30,000 00	$180 00	$90 00	$60 00	$330 00
Do. No. 2, Letitia Court.....	2,000 00	12 00	6 00	4 00	22 00
Do. ground rent, 33 s. 3 d.....	333 00	2 00	1 00	67	3 67
					355 67
Cedar Ward.					
Between Spruce and Pine sts. and Schuylkill 4th and 5th sts	40,000 00	240 00	120 00	86 00	446 00
Lower Del. Ward.					
No. 111 Arch st	14,000 00	84 00	42 00	2 50	128 50
High St. Ward.					
N.E. corner of Front and High sts..	12,000 00	72 00	36 00	3 15	111 15
Lower Del. Ward.					
No. 8 Cherry st., Hospital lot, &c..	14,000 00	86 00	42 00	.....	126 00

Rector, &c., of Christ Church, Phila., vs. County of Phila.

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D.

You are hereby notified that the estate situate, (describing the same,) is the estate of Christ Church Hospital, and is exempt from the assessment and payment of taxes under an act of the legislature of the sixth of April, A. D. 1833, as you are fully informed by our notice, in writing, of the 28th of February, ult. We do therefore protest against the distress you have made for the collection of upon the property found on the premises, and will treat the act as illegal, tortious and unjust, and hold you and all others under whom you act responsible for the same; but inasmuch as great damage, loss, and inconvenience would result from the sale and removal of the property thus distrained, we pay the amount of the several taxes assessed under this illegal and tortious coercion, and protest against it, of which we desire you to take notice.

MOSES KEMPTON,
Warden of Christ Church.

Phila., March, 1853.

(*Endorsement.*)

145.—March Term, 1853.

Christ Church in trust for Christ Church Hospital vs. The County of Philadelphia.

Case stated in the nature of a special verdict.

Filed March 3d, 1854.

1st April, 1854.—Judgment entered without argument for defendant.

By the COURT.

CHRIST CHURCH IN THE CITY OF PHILADELPHIA
vs.
THE COUNTY OF PHILADELPHIA.

And now, to wit, April 1st, 1854, it is agreed that the above case may be removed by the plaintiffs to the Supreme Court without any recognizance being given by them.

WM. BADGER,
Solicitor for the County.
H. M. WATTS,
Att'y for Pl'ffs.

CHRIST CHURCH, in Trust, &c.,
vs.
THE COUNTY OF PHILADELPHIA.

Error Assigned.

The learned court erred in entering judgment for the defendant.

H. M. WATTS, *Att'y for the Pl'ffs.*

1st April, 1854.

(*Endorsement.*)

145.—March Term, 1853.

Christ Church, in trust for Christ Church Hospital, vs. The County of Philadelphia.

Agreement for removal to Supreme Court, and errors assigned. Filed April 1st, 1854.

April 4th, 1854, argued.—Decem. 27, 1854, re-argued.

March 12, 1855.—Opinion by C. J. Lewis. Judgment reversed and judgment in favor of the plaintiffs in error for the sum of one hundred and twenty-six dollars, with costs.

Wherefore it is considered by the court now here, that the said The Rector, Church Wardens and Vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, do recover against the said The County of Philadelphia one hundred and forty-two dollars and twelve cents, which to the said plaintiffs were adjudged for their damages, which they sustained by occasion of certain promises and assumptions by the said defendants to the said plaintiffs made, as for their costs and charges by the said plaintiffs in that behalf expended, whereof the said defendants are convict, as appears of record, &c.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Pennsylvania, greeting:

[SEAL.]

Whereas, lately, in the supreme court of Pennsylvania, before you, or some of you, in a cause between The Rector, Church Wardens, and Vestry of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, plaintiffs in error, and The County of Philadelphia, defendant in error, the judgment of the said supreme court was in the following words, viz:

"Wherefore it is considered by the court now here that the said The Rector, Church Wardens, and Vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, do recover against the said The County of Philadelphia one hundred and forty-two dollars and twelve cents, which to the said plaintiffs were adjudged for their damages which they sustained by occasion of certain promises and assumptions by the said defendants to the said plaintiffs, made as for their costs and charges by the said plaintiffs in that behalf expended, whereof the said defendants are convict, as appears of record," &c., as by the inspection of the transcript of the record of the said supreme court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-seven, the said cause came on to be heard before the said Supreme Court of the United States on the said transcript of the record, and was argued by counsel; on consideration whereof, it is now here ordered and adjudged by this court that this cause be, and the same is hereby, dismissed for the want of jurisdiction. Dec. 30th.

And the same is hereby remanded to you, the said judges of the said supreme court, in order that such proceedings may be had in the said cause, in conformity to the judgment and decree of this court above stated, as according to right and justice and the Constitution and laws of the United States ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-seven.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Costs—
Clerk..... $
Attorney..... $

$

(*Endorsement.*)

145.—March Term, 1853.
13.—December Term, 1857.

Mandate Supreme Court United States.

Rector, &c., of Christ Church, use Christ Church Hospital, vs. The County of Philadelphia.

Filed July 2d, 1858.

In the Supreme Court of Pennsylvania for the eastern district—
Of March Term, 1853.

THE RECTOR, CHURCH WARDENS, AND VESTRY of Christ Church, in the City of Philadelphia, in trust for Christ Church Hospital,
vs.
THE COUNTY OF PHILADELPHIA. } No. 145.

And now, July 14, 1858, on motion of Mr. McCall, for the plaintiffs, and the agreement of the solicitor of the city of Philadelphia, it is ordered that the record in the above case be amended by inserting in the case stated for the opinion of the court the following averment:

"The validity of the act of assembly approved the 14th day of April, 1851, is drawn in question by the plaintiffs, on the ground of its being repugnant to the Constitution of the United States, as tending to impair the obligation of a legislative contract alleged to be contained in the said act of assembly of 6th April, 1833, with Christ Church Hospital; that the real estate belonging to it shall be and remain free from taxes so long as the same shall continue to belong to said hospital."

Per curiam.

W. H. LOWRIE.

(*Endorsement.*)

145. March Term, 1858. The Rector, &c., in trust for Christ Church Hospital, vs. The County of Philadelphia.

Order of court amending the record. Filed August 4th, 1858

Docket Entries. March Term, 1853—No. 145.

The Rector, Church Wardens and Vestrymen of Christ Church, in the City of Philadelphia, in trust for Christ Church Hospital,	H. M. Watts.	145.
vs.		
The County of Philadelphia.	W. D Baker.	

Summons case, ret'ble the first Monday of June, 1853. Exit, 11th May, 1853.

"Service accepted."

March 3d, 1854. Case stated in the nature of a special verdict, filed.

April 1st, 1854. Judgment entered without argument for defendants. By the court.

" " " By writing filed, that the above case may be removed by the plaintiffs to the Supreme Court without any recognizance being given by them. Eodie.

Assignment of errors filed. April 4th, 1858. Argued.

Dec. 27th, 1854. Reargued.

March 12th, 1855. Opinion by C. J. Lewis. Judgment reversed, and judgment in favor of the plaintiff in error for the sum of one hundred and twenty-six dollars, with costs.

Eodie. Opinion filed.

Dec. 7th, 1856. Writ of error from Supreme Court of the United States brought into office. Bond sur writ of error and citation filed.

Jan. 22d, 1857. Writ of error exit to Supreme Court of the U S., with bond and citation attached.